VIRGINIA LAW REGISTER

R. T. W. DUKE, JR., *Editor.*

DAUNIS MCBRIDE AND BEIRNE STEDMAN, *Associate Editors.*

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"Victrix causa deis placuit, sed victa Catoni."—We suppose we may use Lucan's trite remark when we are disposed to take a favourable view of a dissenting opinion. Anyway, in the case of *N. Y. Life Ins. Co.* v. *Dodge,* Advance Sheets No. 11 U. S. S. C., p. 399, we are assuredly with the minority and in our humble judgment Mr. Justice Brandeis's dissenting opinion—in which three other justices concurred—should have been the opinion of the Court.

The Missouri Non-Forfeiture Insurance Case; Freedom to Contract. Extra-Territorial Operation of Statute.

A statute of the State of Missouri prohibited life insurance companies authorized to do business within the state from forfeiting a policy for non-payment in premiums, if three years full premiums had been paid thereon. The act provided that in case of such non-payment the policy should be automatically extended and commuted into paid up insurance. It determined mathematically the length of the term, as that for which insurance could, at a rate prescribed, be purchased with a single premium equal in amount to three-fourths of the reserve or net value, less any indebtedness to the company "on account of past premiums." The highest court in the State of Missouri had decided that this statute could not be modified by contract with the insured, whether entered into at the time the policy was written or subsequently. Such non-forfeiture laws have time and again been held by the Supreme Court of the United States to be a lawful exercise of the police power of the State, and as insurance is not interstate commerce, the State's sovereign power in this respect is as great over foreign as over domestic corporations. *Orient Ins. Co.* v. *Dagg,* 172 U. S. 557; *New York Life*

Ins. Co. v. *Cravens,* 178 U. S. 389; *N. W. Life Ins. Co.* v. *Riggs,* 203 N. S. 243.

In 1900, Dodge, a citizen and resident of Missouri, applied in that state to the New York Life Insurance Co. for a policy on his life in favour of his wife. The policy was delivered in Missouri, where the company had an office and was authorized by the Missouri Statute to do business. All the premiums were paid in Missouri, where Dodge lived until his death in 1912, having paid all of his premiums up to 1907.

In 1906 he borrowed of the company $1,350, pledging the policy as collateral and entering into an agreement by which it was provided that in case of a default in payment of the loan of the company might discharge it by applying thereto the reserve of the policy.

Default was made in 1907. At that time the reserve of the policy was less than the loan; but three-fourths of the reserve exceeded that part of the loan which had been applied to the payment of the past premiums by $275.79. This excess if applied in commutation for term insurance would have extended the policy to December 23rd, 1912. The company, however, claimed the right to use the whole reserve to satisfy the whole of the loan and so applied it, notifying Dodge on December 17th, 1907, that its obligation on the policy ceased. Dodge died in February, 1912.

His widow—the beneficiary—claimed that by reason of the Missouri Statute the policy was still in force when her husband died, and brought suit, recovered judgment, which judgment was affirmed by the Supreme Court of Missouri.

The company appealed to the Supreme Court of the United States, contending that the loan agreement was made in New York and that the state court in refusing to hold Dodge to his contract deprived it of liberty, property and equal protection of the laws, and in violation of the 14th amendment.

The Supreme Court of the United States upheld this contention and reversed the state courts. The Supreme Court held that because the application—though admittedly forwarded from the Missouri office to the New York office—was received in New York and a check on a New York bank for the same was mailed

in New York, and because the principal and interest of the loan was made payable there, that this made it a New York contract and its validity was to be tested by the New York laws alone.

There was a clause in the policy providing for cash loans on the policy and it is admitted that the *policy* was subject to the Missouri law; but the loan agreement providing that in case of a default in payment of premiums the entire policy reserve could be applied to discharge the indebtedness, the Court held was superior to anything else that therefore the company was not bound to make the loan if the provisions of the Missouri Statute are applicable and inhibit valid hypothecation of the reserve as security for the loan.

But it may be said *en passant* that the company did make the loan and if the Missouri law was held binding there would still have been enough to pay the debt out of the policy and leave a surplus for the widow.

But the Supreme Court held that the Missouri law infringed the freedom to contract and that the license authorizing the company to do business in Missouri and imposing terms upon it was of no effect whatever.

To read Justice McReynolds' opinion—delivered for the majority of the Court—and then to read the dissenting opinion of Justice Brandeis—in which dissenting opinion J. J. Day, Pitney and Clarke concurred—is to leave one in absolute amazement as to how the majority opinion could ever have prevailed. By what Mr. Justice Holmes would have delighted to call "ineluctable logic" Justice Brandeis shows that the loan contract was a Missouri contract. It was signed in Missouri; the application for it was signed in Missouri; the delivery was to the Missouri office; Dodge paid the premiums to the Missouri office, and in that office paid off with the new loan a smaller loan he had previously made on the policy.

Not one thing was done in New York except to examine and file the papers received from the Missouri office and mail a check. The New York office exercised no discretion in the matter. As Mr. Justice Brandeis clearly demonstrates, the acts in connection with the loan were exactly similar in character to those performed when the policy was written. The application for the

policy was made in Missouri—forwarded to New York—considered and accepted there; the policy was executed there—by its terms the premiums and the insurance itself were payable there. But this did not prevent the policy being a Missouri contract under the decisions of the Supreme Court itself. *Equi. Life Assur. Soc.* v. *Clements,* 140 U. S. 224; *N. W. Mutual Life, etc.* v. *McCue,* 223 U. S. 234.

The loan agreement was not an independent agreement—it was not even a modification of the original agreement. It was an act contemplated by, provided for it, and was subsidiary to the policy. What was done in New York was not making a New York contract, but performing acts under a Missouri contract.

With pitiless logic Justice Brandeis destroys the contention of the majority of the Court that because there was a provision in the loan agreement to that effect that it was to be deemed as made in New York. We quote from this portion of the opinion:

> "The provision, 'that the application for said loan was made to said company at its home office in the city of New York, was accepted, the money paid by it, and this agreement made and delivered there; that said principal and interest are payable at said home office, and that this contract is made under and pursuant to the laws of the state of New York, the place of said contract being said home office of said company,' is inoperative. For acts essential to the making of any agreement involving a pledge of the policy were done by Dodge, by the beneficiary, and by the company's agent in Missouri, and were subject to the prohibition of a statute of that state which prevented the operation thereof inconsistent New York laws. If the laws of Missouri and of New York had left the parties free to contract insurance on such terms as they pleased, they might with effect have elected to be bound by the law of the state of their preference, whatever the place of the contract; in doing so, they would in effect have specified terms of the contract. But provisions in contracts for incorporating the laws of a particular state are inoperative, so far as the law agreed upon is inconsistent with the law of the state in which the contract is actually made. Mutual L. Ins. Co. *v.* Hill, 193 U. S. 551, 554, 48 L. ed. 788, 791, 24 Sup. Ct. Rep. 538; Supreme Lodge, K. P. *v.* Meyer, 198 U. S. 508, 49 L. ed. 1146, 25 Sup. Ct. Rep. 754. Where the validity of a provision is dependent upon the place in which the contract is made, the actual facts alone are significant. Persons resident in Missouri, who enter there

into a contract which is specifically controlled by the laws of that state, cannot, by agreeing that a modification inconsistent with the requirements of the Missouri law shall be deemed to have been made elsewhere, escape the prohibition of the Missouri Statute. The fact that one of the parties to the contract is a corporation, and hence capable of having a residence also in another state, and that some acts in connection with the contract were done by it there, does not affect the result. The company, although a foreign corporation, was, for this purpose, a resident of Missouri, or, at least, was present in Missouri. Barrow S. S. Co. *v.* Kane, 170 U. S. 100, 42 L. ed. 964, 18 Sup. Ct. Rep. 526; Dunlop Pneumatic Tyre Co. *v.* Actien-Gesellschaft [1902] 1 K. B. 342, 71 L. J. K. B. N. S. 284, 50 Week. Rep. 226, 86 L. T. N. S. 472, 18 Times L. R. 229, 19 Rep. Pat. Cas. 46."

Even admitting that if the rules ordinarily applied is determining the place of a contract required the Court to hold as a matter of general law that the loan was made in New York, the Justice demonstrated that it would not necessarily follow that the Missouri Statue was unconstitutional because it prohibited giving effect in part to the loan agreement—and upon this point we again quote from the opinion:

"The test of constitutionality to be applied here is that commonly applied when the validity of a statute limiting the right of contract is questioned, namely: Is the subject-matter within the reasonable scope of regulations? Is the end legitimate? Are the means appropriate to the end sought to be obtained? If so, the act must be sustained, unless the court is satisfied that it is clearly an arbitrary and unnecessary interference with the right of the individual to his personal liberty. Here the subject is insurance,—a subject long recognized as being within the sphere of regulation of contracts. The specific end to be attained was the protection of the net value of insurance policies by prohibiting provisions for forfeiture,—an incident of the insurance contract long recognized as requiring regulation. The means adopted was to prescribe the limits within which the parties might agree to dispose of the net value of the policy otherwise than by commutation into extended insurance,—a means commonly adopted in nonforfeiture laws, only the specific limitation in question being unusual. The insurance policy sought to be protected was a contract made within the state, between a citizen of the state and a foreign corporation also resident or present there. The protection was to be afforded while

the parties so remained subject to the jurisdiction of the state. The protection was accomplished by refusing to permit the courts of the state to give to acts done within it by such residents (Dodge did no act elsewhere) the effect of nullifying in part that nonforfeiture provision which the legislature deemed necessary for the welfare of the citizens of the state and for their protection against acts of insuring corporations. The statute does not invalidate any part of the loan; it leaves intact the ordinary remedies for collecting debts. The statute merely prohibits satisfying a part of the debt out of the reserve in a manner deemed by the legislature destructive of the protection devised against forfeiture. The provision may be likened to homestead and exemption laws by which creditors are limited in respect to the property out of which their claims may be enforced. When the New York Life Insurance Company sought and obtained permission to do business within the state, and when the policy in question and the loan agreement were entered into, this statute was in existence and was, of course, known to the company. It has no legal ground of complaint when the Missouri courts refuse to give to the loan agreement effect in a manner and to an extent inconsistent with the express prohibition of the statute. The significance of the fact that this suit was brought in a Missouri court must not be overlooked. See Bond *v.* Hume, 243 U. S. 15, 61 L. ed. 565, 37 Sup. Ct. Rep. 366; Union Trust Co. *v.* Grosman, 245 U. S. 412, ante, 181, 38 Sup. Ct. Rep. 158."

The Justice concluded his masterly opinion as follows:

"Furthermore, the right of citizens of the United States which the Allgeyer Case sustained 'is the liberty of natural, not artificial, persons.' Northwestern Nat. L. Ins. Co. *v.* Riggs, 203 U. S. p. 255, 51 L. ed. 173, 27 Sup. Ct. Rep. 126, 7 Ann. Cas. 1104. While a state may not (except in the reasonable exercise of the police power) impair the freedom of contract of a citizen of the United States, 'it can prevent the foreign insurers from sheltering themselves under his freedom.' Nutting *v.* Massachusetts, 183 U. S. 553, 558, 46 L. ed. 324, 327, 22 Sup. Ct. Rep. 238; South Carolina ex rel. Phœnix Mut. L. Ins. Co. *v.* McMaster, 237 U. S. 63, 59 L. ed. 839, 35 Sup. Ct. Rep. 504. The insurance company cannot be heard to object that the Missouri statute is invalid, because it deprived Dodge of rights guaranteed to natural persons, citizens of the United States. Erie R. Co. *v.* Williams, 233 U. S. 685, 705, 58 L. ed. 1155, 1163, 51 L. R. A. (N. S.) 1097, 34 Sup. Ct. Rep. 761; Jeffrey Mfg.

Co. *v.* Blagg, 235 U. S. 571, 576, 59 L. ed. 364, 368, 35 Sup. Ct. Rep. 167, 7 N. C. C. A. 570.

In my opinion the decision of the Springfield Court of Appeals should be affirmed."

The practical effect of this decision is that a state law regulating corporations in respect to contracts, can be made nugatory by the corporation requiring all contracts to be written as if outside of the State. The police power so often invoked by the Supreme Court seems to have failed in the present instance.

Virginia Supreme Court Sustained by the Supreme Court of the United States.

The Supreme Court of the United States has lately sustained the Supreme Court of our State in the two cases of *Dalton Adding Machine Company* v. *The State,* at the relation of the State Corporation Commission, one in which the Dalton Adding Machine Company attempted to reverse our Supreme Court for sustaining the order of the State Corporation Commission assessing a fine against it for transacting business in the State without first obtaining a proper certificate of authority. The opinion delivered by Justice McReynolds is very brief, sets out the specifications in the Commission's opinion, and holds that beyond serious doubt those specifications showed that the business of the company was being carried on in Virginia. In the case of the *General Railway Signal Company* v. *The Same,* the Supreme Court held that the action of the Corporation Commission imposing a fine upon the plaintiffs, which was sustained by our Supreme Court of Appeals, should also be sustained. This opinion is equally brief and quotes previous decisions of the Supreme Court, but adds, "It seems proper, however, to add that this case is on the border line." These cases were decided at April term and at the same term a very interesting and important decision was handed down in the case of *Virginia* v. *West Virginia,* which required the case of the appropriate remedies to be reargued at the February term of the court, when the question of the remedy to be given the State of Virginia to enforce the judgment of the court will be heard and determined.

Acts of the General Assembly of 1918, Which Appear to Be of Importance.

During what was known as the Readjuster regime we were in the office of Judge R——, one of the most distinguished lawyers in Virginia, whose power of sarcastic utterance almost equalled his intellect. A young barrister came in very hurriedly and said, "Excuse me, Judge, have you the last Acts of the Virginia Legislature?"

The Judge looked at him with a sardonic grin: "I deeply regret that I have not that good fortune," he replied, "but I have the volume of the acts passed at the session of the present year."

I do not think the young barrister exactly "took the point," as he walked out with the volume, but the writer has often thought with amusement of the deep feeling the Judge threw into his remark and we never take up a new volume of the acts without being reminded of the incident.

We have been favored with a portion of the advance sheets of the Acts of the session of 1918 and we think it may be of interest and use to the profession to give a brief summary of—or rather reference to—those acts we believe should be noticed. At the time of going to press we have received pp. 1 to 512.

We note that on p. 22 boards of supervisors of all counties in Virginia are authorized to pay a reward of 50 cents for each scalp of the goshawk (astur palmĭbarius), and on page 94 the same power is given to the board of supervisors of Fauquier County. Did our Conscript Fathers consider Fauquier out of the Commonwealth?

On page 92 is an act providing that where a church has been in undisputed possession of real estate, donated but not conveyed, for more than twenty-five years, and no donor or his heirs can be found, then the circuit or corporation court may have the property conveyed, after proceedings provided for in the act are had.

On page 96 is an act which should have been passed several years ago, providing for the return to candidates in primary elections of certain fees of candidates.

On page 99 an act to meet the unfortunate state of affairs

growing out of the decision of our Supreme Court in *Jefferies* v. *Commonwealth* construing the law in regard to the dissolution of Public Service Corporations. This act requires notice to be given and no longer makes it obligatory upon the Corporation Commission to grant such dissolution.

On page 108 an act to validate acknowledgments to deeds, etc., before certain officials in foreign countries where the officer failed to affix an official seal.

On page 137 an act providing that any county or city of this State may pay a monthly allowance to indigent, widowed mothers for the partial support of their children in their own homes. This act, whose purposes are certainly commendable, contains the following remarkable provision:

"It shall be the duty of the *Attorney for the Commonwealth* of such county or city to see that any widow receiving an allowance as provided under this act is properly caring for her children, that they are properly clothed and fed and when it is found that she is not properly caring for such child or children or that she is not a proper guardian for such child or children, or that she no longer needs such support, etc., said order shall be revoked, etc., etc."

We wonder if our sapient legislators for one moment realized what this language meant or what a burden it placed upon any conscientious attorney for the Commonwealth.

Some of the counties of this state are fifty miles in length and breadth. Say that five widows at extreme ends of the county are granted an allowance of five dollars per month—How is the Attorney for the Commonwealth to find out each month, or even once a year, that this money is properly applied. Is he to make domiciliary visits at fixed or unfixed periods? How is he to get to these "far off widows" except by furnishing transportation at his own expense, to say nothing of the loss of his time? For there is no compensation to the official for this added burden. We imagine this clause will practically annul the act, for we imagine very few boards of supervisors would—if the Attorney for the Commonwealth was present, as he should be at their meetings—donate funds to be so looked after. We may well ask why this official should have been se-

lected instead of the overseers of the poor in each district, or the supervisor in each district. Why not the delegate from the county, whose interest in the dear people might induce him to take up this eleemosynary work?

To put such a burden upon the law officer of the county—one almost impossible of proper fulfillment—is little short of an absurdity. We are reminded of a remark once made to us by a dear old attorney for the Commonwealth who had served for many years and upon whom the burden of acting as judge upon appeals from the decisions of trustees from the school districts, weighed very heavily:

He came into our office from a hotly contested question as to the removal of a school—a question which lead almost to blows and in which a stormy meeting of patrons had been held. "Sir!" said our old friend, "This is an infernal outrage—compelling the Commonwealth's Attorney to act in these matters! taking up valuable time and making a hundred enemies, *without getting a cent for it!*"

On page 139, Section 3680 of the Code is again amended so as to lessen the punishment, where the carnal knowledge is of a female over 14 years and with the further provision that if such knowledge be with the consent of a female between the ages of 14 and 15 years and not an inmate of a hospital for the insane or deaf, dumb and blind, the subsequent marriage of the parties, with the written consent of both parents, if living, or the living parent or guardian of the female, may be pleaded in bar of prosecution.

On page 140, Section 3730 of the Code, in relation to pulling down fences or leaving gates open is amended.

On page 160, Section 492 of the Code of Virginia is amended as regards the listing of personal property for taxation, by a guardian, trustee, etc.

Page 171 is an amendment to the taxation laws, especially as to classification under Schedule C., which should be carefully considered.

On page 177 is an act amending the Act Concerning Corporations which became a Law on May 21st, 1903, and which has been repeatedly amended and re-enacted.

On page 221, Section 3194 of the Code as to practicing law for compensation without being licensed, etc.

On page 226 is an act making it unlawful for a person, firm or association to transact business in this State as a corporation, or to offer or advertise to transact business as a corporation, without first being incorporated.

Page 264 is an act prohibiting Gypsies or other strolling persons to receive compensation for pretending to tell fortunes, or to practice magic arts.

On page 265, Section 2158 of the Code in relation to special juries is amended. It is to be regretted that the number of a special jury should not have been reduced to the same number as an ordinary jury.

On page 271 is an act in relation to fiduciary investments, which adds to the list of legal investments, federal farm loan bonds.

On page 312 is an act amending the act of February 5th, 1916, in relation to the offense of entering into a contract of employment for personal service, etc., oral or written, or for the performance of personal service to be rendered within one year, in and about the cultivation of the soil and thereby obtaining from the employer money or other thing of value under the contract and fraudulently refusing to perform such service or to refund the said money, etc. This act fails to cure the defects pointed out some time ago in the REGISTER in the original act. Under that act and the present one it must be proven that the person entered into such contract with intent to injure or defraud his employer—an intent almost impossible to prove.

On page 315 is a very salutary act allowing courts and judges to take judicial notice of any book of recognized authority purporting to contain the law, statutory or otherwise, of another state or county or of the United States.

On page 332 is an act providing for the commitment of misdemeanors to any county or city farm.

On page 347 the act regulating the employment of children in certain employments is for the third time amended.

On page 363 is an act regulating the hours of labor of women.

On page 364 is a very valuable act making uniform the laws relating to limited partnerships.

On page 392 is an act in regard to the Income Tax.

On page 397 an act requiring the clerks of the courts to make reports of all divorces granted and pending.

On page 398 an amendment of Section 3191 of the Code is amended in regard to the Board of Bar Examiners.

On page 401 an act providing for the contraction of the corporate limits of cities and towns.

On page 408 an act prohibiting the forfeiture of any bail bond where the person prevented from complying with the condition thereof has enlisted or been drafted in the army of the United States.

On page 408 as to fishing by nonresidents.

Page 409 an act amending Section 1402 of the Code as to suits by or against trustees.

Page 411 providing for public health nursing, medical inspection and health inspection of school children.

Page 413 defining public utilities.

Page 416, the Revenue Act, of special importance as to the Inheritance Tax.

Page 424, an act relating to the filing of answers and suits for the sale of infants' interests in real estate—a very salutary act preventing the invalidation of any deed in a suit in chancery for the sale of an infant's interest in land, where the guardian had filed one of the answers required under the statute and not the other. We never could see any reason why this statute required an answer by the infants by the guardian *ad litem* and that an answer of the infants by him. As the matter is a purely statutory one, one answer it seems to us ought to be amply sufficient.

On page 425 is an act making it a misdemeanor to boat, fish, hunt, gun or skate in or over the waters of any lake, pond, etc., connected with the public water supply of any city. It is unfortunate that this act required it to be a city of over 19,000 inhabitants. Certainly a city of 5,000 inhabitants is entitled to as much protection in regard to its water supply as any other.

On page 430 is an act providing for the escheating of accounts in banks which have stood for over 21 years without being checked upon.

On page 432 an act amending Section 508, a very drastic act to check as far as possible immorality.

On page 437 an act requiring the clerks of the courts to keep a separate book for the Federal Farm Loan Mortgages.

On page 441 an act in relation to the sale of soft drinks requiring licenses, etc.

On page 444 an act amending Section 3418 of the Code, an act in regard to the commissioners appointed to execute deeds. This act should be carefully studied by lawyers who after the act goes into effect make deeds as commissioners of the court.

On page 453 an act providing for the punishment of those making or issuing false statements to obtain property or money. The terrors of an act of legislature have never been as thoroughly set out as in the caption of this act, which reads, "An Act to Punish the Making, Etc."

Page 454, an act setting out what investments fiduciaries, etc., should be allowed to make.

Page 458, amending the act of Feb. 17th, 1916, in regard to the sanitation of slaughter houses, abattoirs, etc.

On page 461, an act amending the act authorizing boards of supervisors to enact special and local legislation to protect the public roads and bridges from obstruction, etc.

On page 466, amending Section 3160, Virginia Code, in regard to pay of jurors.

On page 468, an act giving justices of the peace jurisdiction for the sale or partition of personal property of greater value than $20.00 and no more than $300.00.

On page 469 an act allowing personal representatives and guardians of estates of $100.00 or less, to qualify without security, and providing that no tax or court costs shall be charged upon the qualification by a personal representative of an estate by a decedent under $100.00.

On page 473 an act regulating marriages and the issuance of marriage licenses prohibiting marriages in certain cases, etc. This is an exceedingly drastic act which prohibits any marriage

to be solemnized by any party knowing that either party is a habitual criminal, idiotic, imbecile, hereditary epileptic or insane person, and, unless the female be over the age of 45 years, to any person of any age who is affected at the time with any contagious venereal disease. This act requires the clerk to take the affidavits of parties in this respect and making it legal for any person knowing of the disabilities named in the act to appear before the clerk or party who may solemnize the marriage and present evidence why license should not be granted or the ceremony should be performed. An appeal is allowed to parties to whom the license is refused.

On page 479 is an act which seems to us to be in conflict somewhat with the act on page 96 in regard to the disposal of certain fees from primary elections.

On page 495 is an act making it unlawful to receive or buy certain articles in connection with houses, like electric fixtures, etc., from any person not the owner, or authorized agent of the owner of said articles. This applies only to cities of the Commonwealth.

On page 485 an act in regard to the removal of remains reinterred in graveyards and the sale of such land.

On page 486 an act prohibiting the use of public drinking cups in practically every public place in the State.

On page 487 an act amending Section 3630 of the Code in relation to homestead exemption.

On page 489 an act to ratify and confirm proceedings in partition suits in real estates in which infants have undivided interests, where for the purpose of acquiring such real estate the capital stock of a corporation has been issued. The wisdom of this act, to say the least of it, is somewhat doubtful.

On page 495 is an act authorizing the organization of home guard companies.

On page 597 is an act amending Section 2108 of the Code of Virginia in regard to unlawful fishing.

On page 500 is an act to provide for the recordation of the names of drafted men.

On page 504 is an act providing for the recordation of certain maps and plats and validating certain maps and plats already

recorded. On the same page is an act in regard to the fees of commissioners in lunacy.

On page 506 an act providing that no police justice, or civil and police justice, may be removed except by a court of record having jurisdiction over either county or city wherein such justice has jurisdiction. On the same page, validating of acknowledgments to deeds and other writings taken and certified by notaries public residing in foreign countries, otherwise valid according to the law then in force.

Public Charities—Acts 1914, P. 414.

In the note appended to *Pirkey* v. *Grubb* (Va.), 94 S. E. 344, in 4 Va. Law Register, N. S., 14, 23, Acts 1914, p. 414 (4 Code Supp. 1916, sec. 1420) is cited and limited to the proposition that charitable trusts for educational purposes except unincorporated theological seminaries are validated.

In 1914 the General Assembly passed a statute entitled, "An Act to amend and reenact section 1420, chap. 65, of the Code of Virginia, in reference to the validity of gifts, devises, et cetera for purposes of education." Section 1420 before amendment provided for the validity of every gift, grant, devise or bequest, since April 2, 1839, or at any time in the future, made for literary purposes, or for the education of white persons within the state; and for every gift, grant, devise, or bequest, since April 10, 1865, or at any time in the future, made for literary purposes, or for the education of colored persons within the state, notwithstanding the uncertainty of the beneficiary, with two exceptions: first, such devises or bequests as have failed or become void under the Act of April 2, 1839, section 7; second, devises or bequests to or for an unincorporated theological seminary. The amendment consisted in the addition, after the provision for literary purposes and the education of colored persons, of the following words: "and every gift, grant, devise or bequest hereafter made for charitable purposes."

The first exception in Code, sec. 1420, refers to the first section of Act of 1839, which provided for devises or bequests

thereafter made for unincorporated schools, etc., for the education of free white persons, while the seventh section of the Act of 1839 provided that the circuit court should report to the legislature the probate of any will containing such devises or bequests and that if the legislature should refuse, or within two successive sessions thereafter should fail, to incorporate such schools, etc., the devises or bequests should be void. See *Kelly* v. *Love,* 61 Va. (20 Gratt.) 124, 131, and monographic note thereto in Va. Rep. Ann. See also, *Handley* v. *Palmer,* 91 Fed. 948, 954.

The second exception in Code, sec. 1420, refers to devises or bequests to unincorporated theological seminaries. The same language is contained in the amending Act of 1914. It is interesting to note that under Code, sec. 1398, conveyances, devises, or dedications for certain religious purposes since January 1, 1777, are valid, but only future conveyances and not future devises or bequests are provided for. *Seaburn* v. *Seaburn,* 56 Va. (15 Gratt.) 423, 427, construing the Code of 1849.

In the Code of 1904, section 1420 is a part of chapter 65 and title 22. Title 22 reads, "Of Education," and chapter 65, the first chapter therein, reads, "Of Funds for Education from Glebe Lands and Church Property, and from Gifts, Grants, Devises or Bequests," while section 1420 reads, "Validity of Gifts, Devises, Etc., for Purposes of Education." The title of Acts 1914, chap. 234, p. 414 is given in full in the second paragraph above. Some question may be raised as to the sufficiency of the expression in the title of the original and amending Acts, of the object of the Amendment, as required by Constitution, sec. 52. If the title of the original Act is sufficient to cover the amendment, the title of the amendatory act becomes unimportant. *District Road Board* v. *Spilman,* 117 Va. 201, 84 S. E. 103. But in this case the title of both acts are confined to the "validity of gifts, devises, etc., for purposes of education." The language of the amendment "every gift, grant, devise or bequest hereafter made for charitable purposes," unless construed under the rule of ejusdem generis to mean gifts, etc., relating to education, is broad enough to cover relief to the poor, hospitals for the in-

sane, and various other charities too numerous to mention and totally unconnected with education.

In this connection it is proper to consider the purpose of the provision of Const., § 52, that "no act passed by the legislature shall embrace more than one object which shall be expressed in its title." It is not questioned that the legislature could provide for all public charities in a statute entitled "An act in reference to the validity of gifts, grants, devises, and bequests for public charitable purposes," without infringing the constitutional requirement, but the latter part of the provision is involved, viz., that the object shall be expressed in the title.

The purpose of the constitutional provision is to prevent log-rolling legislation, or omnibus bills, and surprise or fraud upon the legislature by incorporating provisions in a bill of which the title gives no intimation and which may therefore be carelessly or unintentionally adopted, and to apprise the people of the subjects of legislation. The provision is mandatory and has been adopted in many states. (12 Va.-W. Va. Enc. Dig. 750, 751.)

That this is a real condition and not a theory is shown in the instant case by the fact that in annotating *Pirkey* v. *Grubb,* the investigator found the amendment of Code, § 1420 in the 4th vol. of Pollard's Code with the same title and practically the same wording with the exception of a line and a half added in the middle of the section, and not comparing the statute word by word considered it a reenactment with little or no change instead of a revolutionary one covering the whole subject of public charities instead of educational or literary trusts.

On the other hand every presumption is in favor of the act, which is remedial and for the public good, and the title is to be construed liberally in favor of the act, and matters in furtherance of the object and cognate or germane to the title are to be sustained (see *Cochran* v. *Com.* (Va.), 94 S. E. 329, ante, p. 97, 12 Va.-W. Va. Enc. Dig. 751, 752). It might be added that some of the prominent members of the profession have expressed the opinion that the Act of 1914 is comprehensive enough to validate all public charities and will be so construed and upheld.

D. McB.